

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.234 OF 1995**

Mrs. Madhubala Vivek Sonigra ...Applicant

Vs.

Shri. Vivek Chandanmal Sonigra
and Anr. ...Respondents

Shri. V.G.Peshave for the Applicant.

Shri. K.V.Saste, A.P.P. for the State.

Shri. N.D.Jaywant for the Respondent No.1.

CORAM : A. S. OKA, J.

DATED : AUGUST 04, 2005.

JUDGMENT:

1. This Revision Application was heard finally on the last date. For want of sufficient time, the judgment could not be dictated.

2. The Revision Application is filed against the order of acquittal by the original first informant. The Applicant is the wife of the Respondent No.1. The date of the marriage, is 21st May, 1983. The allegation of the Applicant is that initially after the marriage she was treated very well by the Respondent No.1 and other members of his family. However, from the year 1985 onwards the Respondent No.1 and other accused persons started abusing her. The Respondent No.1 is the accused No.1. The accused Nos.2 and 4 are the brothers-in-law of the Applicant and the accused Nos.3 and 5 are the in-laws of the Applicant. The case of the Applicant is that when she was pregnant, the accused Nos.1, 3 and 5 started demanding sum of Rs.10,000/- and they insisted that

the amount should be brought by the Applicant from her parents. When she refused to comply with the said demands, she was abused and assaulted. When the father of the Applicant expressed inability to pay the amount, the Applicant was kept starving for two days and later on she was driven out of the house. As a result, the Applicant was required to take shelter in the house of her parents. Later on the Applicant gave birth to a child.

3. The case of the Applicant is that in the year 1986 at the time of marriage of the accused No.2, the Applicant's father took her to the house of the accused and paid a sum of Rs.10,000/- to her father-in-law. Subsequently, she was treated properly for sometime. In the year 1987 during the second pregnancy, the Applicant was again illtreated. The Respondent No.1 tried to press her neck. The Applicant had to bite the hand of the Respondent No.1 to rescue herself and after rescuing herself she started running towards Police Station when a neighbour pacified her and brought her back to the house of the accused. Her further case is that the Respondent No.1 demanded a sum of Rs.10,500/- which was lying in the bank account of the Applicant. Another incident alleged by the Applicant is that the Respondent No.1 threw away the clothes of the

Applicant on road and assaulted her by an iron press. The allegation is that the Respondent No.1 was not allowing the Applicant to go to her parents' house. On 17th December, 1989 when the Applicant was carrying a mattress inside the house, she accidentally dashed against the plate held by the Respondent No.1 while the Respondent No.1 was taking breakfast. The Respondent No.1 gave her first blow on the mouth and abused her in filthy language. The Applicant sustained injuries and therefore, she had to approach the Police Station. After she was examined by a doctor in Sasoon Hospital, she lodged F.I.R. and offence was registered against all the five accused under sections 498-A, 323 read with section 34 of the Indian Penal Code.

4. The State has not preferred any appeal against the acquittal. The learned Advocate appearing for the Applicant submitted that there was clinching evidence on record to establish the guilt of the Respondent No.1 under sections 498-A and 323 of the Indian Penal Code. He submitted that there was enough evidence on record to prove the illtreatment given to the Applicant and demands made by the Respondent No.1. He submitted that offence punishable under section 323 of the Indian Penal Code was clearly established by the prosecution. He has invited my attention to various

findings recorded by the learned Magistrate as well as various findings recorded by the learned Additional Sessions Judge. He submitted that since the evidence of the material witnesses has been ignored by the learned Additional Sessions Judge, it is necessary to pass order of remand.

5. The learned Counsel appearing for the Respondent No.1 submitted that scope of the Revision Application is very limited and there cannot be re-appreciation of evidence in Revision Application.

6. I have considered the rival submissions. The perusal of the judgment of the Appellate Court shows that ocular evidence of all the witnesses has been considered and appreciated by the learned Sessions Judge. The learned Additional Sessions Judge has recorded finding that father of the Applicant (P.W.No.2) has not corroborated the evidence of the Applicant in material particulars. The learned Judge noted that the P.W.No.2 did not state before the Court that the Applicant contacted him on telephone and informed him regarding the demand of the accused. It is pertinent to note that the Additional Sessions Judge found that P.W.No.2 i.e. the father of the Applicant did not state in his evidence that the Accused No.3 met him at his house and demanded the

amount.

7. The learned Additional Sessions Judge referred to the admission of the Applicant in cross-examination that on 17th December, 1989 there was a minor dispute between the Applicant and her husband i.e. the Respondent No.1. However, in the complaint at Exhibit 29 which was sent to the Commissioner of Police, the Applicant alleged that on that day all the five accused tried to kill her and she had to run away. The learned Appellate Judge has also referred to the report filed by the Applicant at Exhibit 48. After considering the evidence of the P.W.No.2, the version of the Applicant in the report at Exhibit 48 as well as in the complaint at Exhibit 29, the learned Additional Sessions Judge has disbelieved the case made out by the Applicant.

8. The learned Additional Sessions Judge also referred to the Judgment delivered in Divorce Petition filed by the Applicant against the Respondent No.1. In paragraph No.16, the learned Judge has recorded the following finding:

"16) If all this evidence is taken into consideration then it shows that version of the complainant is not supported by her father as well as no witness has been examined like Sundarabai or Jawatraj to corroborate her version.

Her evidence further shows that she exaggerated the facts and she gave inconsistent statement at various stage, she also gave evasive reply, she also put up the same incident in different way by making mole from the mountain. Though at one stage she admitted that incident dated 17.12.89 is minor one."

9. So far as allegation regarding commission of offence under section 323 of the Indian Penal Code is concerned, apart from disbelieving the version of the Applicant, the learned Judge noted that when she was examined on 17th December, 1989 by a Medical Officer of Sasoon Hospital, Pune, she did not give history of assault. There is some justification in the criticism of the learned Advocate for the Applicant regarding finding recorded by the learned Additional Sessions Judge that the charge under section 323 of the Indian Penal Code was very vague. Even though the observation made on that behalf is erroneous, it will not affect the final conclusion. The reason given by the learned Additional Sessions Judge for coming to the conclusion as regards offence under section 323 of the Indian Penal Code is that in the entire case made out by the Applicant was exaggerated and inconsistent.

10. Perusal of the judgment of the Additional Sessions Judge shows that the learned Judge has considered and appreciated all the legally admissible

evidence. Even accepting all the submissions made by the learned Counsel for the Applicant, at highest, what can be said is that a different conclusion could have been drawn on the basis of the same evidence. Even in an Appeal against acquittal, the order of acquittal could not have been converted into one for conviction only on the ground that it is possible to come to a different conclusion on the basis of the evidence on record. There is no manifest illegality committed by the learned Additional Sessions Judge. There is no procedural irregularity. There is no merit in the Revision Application and the same is rejected.

JUDGE